

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NELSON CAMPBELL, ET AL.,
Plaintiffs,
v.
FMC TECHNOLOGIES SURFACE
INTEGRATED SVCS, ET AL.,
Defendants.

Case No. 1:20-cv-00901-CDB

**ORDER ON PARTIES' STIPULATION
FOR APPROVAL OF PAGA
SETTLEMENT**

(ECF No. 29)

Before the Court is the parties' Stipulation for Order Approving Private Attorneys General Act (PAGA) Settlement, filed on September 27, 2022. (ECF No. 29). On the same day, Plaintiffs' Attorney Karl Gerber filed a Declaration in support of the stipulated Order Approving PAGA Settlement. (ECF No. 30). Having considered the stipulated motion and the supporting documentation, for the reasons set forth below, the Court approves the settlement agreement.

BACKGROUND

On June 29, 2020, Plaintiffs filed a complaint against Defendant, FMC Technologies Integrated SVCS (FMC). (ECF No. 1). Under the operative Second Amended Complaint (ECF No. 23), filed August 30, 2021, Plaintiffs Nelson Campbell and Mark Valles raised Private Attorney General Act (PAGA) allegations against FMC under California Labor Code Section 2699, *et seq.* Plaintiffs (former employees of Defendant) alleged that Defendant failed to pay

1 them standard and overtime wages while they were on a restricted on-call/standby status and
2 failed to pay them wages for every time they answered their work phone when on-call.

3 According to the parties' representations in the pending stipulation, on May 2, 2022, this
4 case was mediated by retired San Diego Superior Court judge Steven Denton. On July 1, 2022,
5 the parties agreed to all terms in connection with a PAGA settlement of this case, and they
6 executed an agreement on July 8, 2022. (ECF No. 29, p. 2 & Exhibit 1 (the Agreement)). The
7 parties request Court approval of their settlement because under Cal. Lab. Code §2699(1)
8 proposed PAGA settlements require court approval.

9 **THE PROPOSED SETTLEMENT**

10 The underlying PAGA claims to be released include : (1) failure to pay for all hours
11 worked, (2) failure to pay for controlled standby time, (3) failure to pay reporting time pay, (4)
12 failure to pay minimum, overtime and double time wages, (5) failure to properly calculate the
13 regular rate of pay, (6) failure to provide meal and rest breaks, (7) failure to pay meal and rest
14 break premiums at the correct regular rate of pay, (8) failure to reimburse for business expenses,
15 (9) failure to provide complete and accurate wage statements, (10) failure to timely pay all wages
16 owed to employees who quit or are terminated, and (11) failure to maintain required payroll-
17 related records. Cal. Lab. Code §§ 201 *et seq.* (Agreement ¶ 15).

18 According to the Agreement, Defendant will pay a sum of \$75,000.00 (Agreement ¶ 10)
19 The Net Settlement amount is the amount remaining to distribute to the California Labor
20 Workforce Development Agency (LWDA) and the PAGA aggrieved employees, after Plaintiff's
21 attorney fees up to \$25,000, litigation costs of up to \$4,000, and administration costs of up to
22 \$2,000 are paid. (*Id.* at ¶ 11). The PAGA aggrieved employees consist of all nonexempt
23 assemblers and technicians employed by FMC from July 16, 2019, until the date of this Order.

24 **LEGAL STANDARD**

25 The Private Attorneys General Act, Cal. Lab. Code §§ 2699 *et seq.*, was enacted after the
26 California Legislature declared that: (i) adequate financing of labor law enforcement was
27 necessary to achieve maximum compliance; (ii) staffing levels for state labor law enforcement
28 agencies have declined and were unable to keep up with a growing labor market; (iii) vigorous

1 assessment and collection of civil penalties provides a meaningful deterrent to unlawful conduct;
2 and (iv) it was therefore in the public interest to allow aggrieved employees, acting as private
3 attorneys general, to seek and recover civil penalties for Labor code violations. *Chamberlain v.*
4 *Baker Hughes, a G.E Company, LLC*, Case No. 1:19-cv-00831-DAD-JLT, 2020 WL 4350207, at
5 *3 (E.D. Cal. July 29, 2020) (citations omitted).

6 PAGA allows an aggrieved employee to bring an action for civil penalties for labor code
7 violations on behalf of themselves and other current or former employees. Cal Lab. Code §
8 2699(a). A plaintiff suing under PAGA “does so as the proxy or agent of the state’s labor law
9 enforcement agencies.” *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009). A judgment in a
10 PAGA action “binds all those, including nonparty aggrieved employees, who would be bound by
11 a judgment in an action brought by the government.” *Id.*

12 PAGA imposes certain limits on litigants. First, because a PAGA action is a “substitute”
13 for an action brought by the state government, a plaintiff suing under PAGA is limited to civil
14 penalties only, rather than damages available privately through direct or class action claims. *Id.*
15 Second, under PAGA, the aggrieved employee must first provide written notice to the LWDA as
16 well as to the employer. Cal. Lab. Code § 2699.3(a)(1). Third, any civil penalties recovered must
17 be distributed as follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved
18 employees. *Id.* § 2699(i).

19 Finally, any settlement of PAGA claims must be reviewed and approved by a trial court.
20 *Id.* § 2699(l)(2). The legal authority identifying the proper standard of review of PAGA
21 settlements to be employed by the court is still nascent. *Moniz v. Adecco USA, Inc.*, 72
22 Cal.App.5th 56, 75 (2021) (“PAGA itself does not provide a standard for this review and
23 approval”) In the Ninth Circuit, courts have approved of PAGA settlements when (1) they meet
24 the statutory requirements set forth by PAGA, and (2) are fundamentally fair, reasonable, and
25 adequate in view of PAGA’s public policy goals. *Chamberlain*, 2020 WL 4350207, at *4 (cited
26 favorably by *Moniz*, 72 Cal.App.5th at 75-76).

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DISCUSSION

A. The PAGA Settlement

According to Attorney Gerber, the potential state labor code sections that could have led to PAGA liability due to the nonpayment of wages were Cal. Lab Code §§ 204, 210, 215, and 216. (Declaration ¶ 11). Attorney Gerber attests that those code violations could have led to a maximum of \$1,600 in PAGA penalties per employee, per pay period. However, Attorney Gerber represents that Cal. Lab. Code Section 2699(e)(2) permits the court to enter penalties for less than the maximum penalty allowed. He represents that the amount of penalties to be paid varies based on a variety of factors outside of his control, including interpretations by the presiding judge.

Attorney Gerber represents that Plaintiffs had a strong case on two issues. First, the PAGA group had neither timecards nor time punches, nor were there start and stop signs displayed to indicate when employees started or ended work. *Id.* ¶ 20. Second, Attorney Gerber was confident on the issue of meal breaks because there allegedly was no documentation that meal breaks were taken, which would generate a presumption that the meal breaks were not taken. *Id.*

As for the penalties themselves, Attorney Gerber represents that the case had some inherent uncertainty as to whether a jury would consider Defendant's behavior reprehensible (which presumably were inure to the Plaintiffs' benefit) or, the alternative, that Defendant merely oversaw a poorly thought-out system of payments due to the lack of record keeping. *Id.* ¶ 22.

Attorney Gerber attests that based on his experience, a \$75,000 PAGA settlement in a case involving a group of 15 people and 620 pay periods (*e.g.*, roughly \$120.97 per pay period) is favorable as compared to other PAGA cases. *Id.* Attorney Gerber also based his assessment of the proposed settlement's favorability on other benefits gained through avoiding trial, including additional expenditure of attorney fees, the cost of hiring an expert witness, and the inconvenience to Plaintiffs of appearing for trial.

Attorney Gerber's declaration demonstrates that he is experienced with litigating PAGA claims and has a suitably informed sense of viable settlement amounts. He declared that he never has submitted a PAGA settlement that was rejected by the Court. Some examples of PAGA non-

1 class settlements for which Attorney Gerber has been lead counsel in the Eastern District of
2 California include *Chamberlain v. Baker Hughes*, No. 1:19-cv-00831-DAD-JLT, and *Messic v.*
3 *TechipFMC, U.S. Holdings LLC*, No: 1-17-cv-00608-LJO-JLT. The undersigned has reviewed
4 the filings in these two cases and finds Attorney Gerber's representation is consistent with his
5 claimed experience and skill in resolving PAGA cases.

6 With this understanding, the Court will approve the Agreement as it pertains to the award
7 of PAGA penalties. Counsel has adequately described his experience with pursuing settlements,
8 the difficulties related to the nature of this case, and the risks associated with increased costs of
9 litigation. Attorney Gerber's declaration elaborates on the risk analysis he undertook concerning
10 the possibilities of failing to prevail at trial or receiving a reduced award. Counsel's consideration
11 of all these factors as well as the examples of settlement amounts that he managed to secure in
12 similar cases reflect the fairness and reasonableness of the Agreement.

13 **B. Attorney's Fees**

14 The relevant PAGA provision pertaining to attorney's fees states: "Any employee who
15 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Cal.
16 Lab. Code § 2699(g). Calculating fees under this provision requires application of the lodestar
17 method. *Chamberlain*, 2020 WL 4350207, at *5; see *PLCM Grp. v. Drexler*, 22 Cal 4th 1084,
18 1095 (2000) (noting that the fee inquiry in California begins with the "lodestar"). "In determining
19 reasonable hours, counsel bears the burden of submitting detailed time records justifying the
20 hours claimed to have been expended." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210
21 (9th Cir. 1986). "Where the documentation of hours is inadequate, the district court may reduce
22 the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Likewise, the court
23 should exclude from the lodestar fee calculation any hours that are not "reasonably expended,"
24 like excessive, redundant, or otherwise unnecessary hours. *Id.* at 434.

25 In considering fee applications, the reasonable hourly rates are calculated according to
26 prevailing market rates in the relevant legal community. *Blum v. Stenson*, 465 U.S. 886, 895
27 (1984). The fee applicant bears the burden of producing satisfactory evidence "that the requested
28 rates are in line with those prevailing in the community for similar services by lawyers of

1 reasonably comparable skill, experience and reputation.” *Id.* at 896 n.11. “Affidavits of the
 2 plaintiffs’ attorney and other attorneys regarding the prevailing fees in the community, and rate
 3 determinations in other cases, particularly setting a rate for the plaintiffs’ attorney, are satisfactory
 4 evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896
 5 F.2d 403, 407 (9th Cir. 1990).

6 The Agreement provides that up to \$25,000 may be subtracted as attorney fees from the
 7 total amount of \$75,000 by Court approval. (Agreement ¶ 11). Attorney Gerber submitted in
 8 support of the Agreement billing statements from his firm, Campbell & Valles, which totaled
 9 101.7 hours for Attorney Guleser. (Declaration, Exhibit 6). Attorney Gerber attests that he spent
 10 more than 100 hours on the case but fails to offer any billing records – contemporaneous or
 11 otherwise – supporting his claim. (*Id.* ¶ 28). Thus, for the approximately 201.7 hours of attorney
 12 time spent on the case, the proposed fee amount of \$25,000 would yield an attorney billing rate of
 13 \$123.95 per hour.

14 The party seeking attorney’s fees bears the burden of producing documentary evidence
 15 demonstrating the number of hours spend on and rates on the litigation. *McCown v. City of*
16 Fontana, 565 F.3d 1097, 1102 (9th Cir. 2009). Ordinarily, “parties are subject to a reduction in
 17 the hours awarded when they fail to provide adequate documentation, notably contemporaneous
 18 time records.” *Chamberlain*, 2020 WL 4350207, at *7 (quotation and citation omitted). It is
 19 particularly frustrating to the undersigned that Attorney Gerber has been admonished by the Court
 20 in another PAGA settlement case for his failure to submit to the court contemporaneous billing
 21 records in support of a request for attorney’s fees. *Id.* Instead of following this Court’s earlier
 22 direction in *Chamberlain*, Attorney Gerber submitted in support of the instant request for
 23 attorney’s fees a Laffey Matrix for members of the D.C. Bar in the Washington, D.C. area. That
 24 information is of little to no value to the Court for purposes of the lodestar calculation.

25 Still, Attorney Gerber attest that he has received fees between \$600 and \$1,000 per hour
 26 for awards in previous PAGA settlement cases, indicating that the effective billable rate here is
 27 reasonable. The proposed \$25,000 attorney fee figure represents 33 percent of the gross
 28 settlement payment. Furthermore, in *Chamberlain*, the Court approved an hourly rate award of

1 \$90.90 for Attorney Gerber. The court in *Chamberlain* further noted that appropriate rates in this
2 community in the years of 2015 and 2016 ranged from \$275 to \$400 dollars for attorneys with 20
3 or more years of experience. *See e.g.*, *In re Taco Bell Wage & Hour Actions*, 222 F. Supp.3d 813,
4 839 (E.D. Cal. 2016) (concluding that \$350 to \$400 per hour for attorneys with twenty or more
5 years of experience was appropriate); *Sanchez v. Frito-Lay*, No. 1:14-cv-00797-AWI, 2015 WL
6 4662636, at *18 (E.D. Cal. Aug. 5, 2015), report and recommendation adopted, 2015 WL
7 5138101 (E.D. Cal. Aug. 26, 2015) (awarding rates of \$275 to \$350 for attorneys experiences
8 ranging between 14 and 20 years of experience).

9 Accordingly, because the proposed \$25,000 attorney's fee award is consistent with a rate
10 of \$123.95 per hour figure and significantly below the lodestar, the Court will approve the
11 \$25,000 in fees as requested.

12 | C. Costs

13 Attorney Gerber attests to the litigation costs incurred to date in this action. Attached to
14 the Declaration is a billing statement of Litigation Costs Advanced (through September 6, 2022),
15 totaling costs in the amount \$8,744.30. (Declaration, Exhibit 8). The itemized costs incurred
16 include costs and fees associated with mediation, depositions, photocopies, postage, litigation
17 filing, telephone calls and transportation. Attorney Gerber also submits a statement from Phoenix
18 Settlement Administrators involving administrative tasks costing no more than \$1,514.23. (*Id.*,
19 Exhibit 9). Upon review of the figures set forth in the Declaration, the Court approves the
20 stipulated amount for \$4,000 in the Agreement for costs incurred as well as the requested amount
21 of \$1,514.23 in claim administrator costs as reasonable.

CONCLUSION AND ORDER

23 Based on the parties' stipulation and for the reasons set forth above,

- 24 1. The PAGA settlement agreement (ECF No. 29, Exhibit 1) is APPROVED, and plaintiffs'
25 counsel shall receive \$25,000.00 in attorneys' fees and a reimbursement of up to
26 \$4,000.00 for litigation costs;
27 2. The parties are DIRECTED to effectuate all terms of the PAGA settlement agreement
28 (ECF. No. 29, Exhibit 1) and any deadlines or procedures for distribution therein;

- 1 3. Within 30 days of the date of service of this Order, the parties are ORDERED to file a
2 stipulation to dismiss this action or a Joint Report setting forth why a final accounting by
3 the claims administrator has not been accomplished and when the parties intend to file a
4 stipulated dismissal; and
- 5 4. All pending dates, conferences and hearings are VACATED.

6 **The parties are advised that failure to comply with this order may result in the Court
7 imposing sanctions, including dismissal of the action.**

8 IT IS SO ORDERED.

9 Dated: December 9, 2022



UNITED STATES MAGISTRATE JUDGE

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